

DOCKET FILE COPY ORIGINAL
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of Station)	
WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a)	
New Television Station On)	
Cannel 51, Reading, Pennsylvania)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: Administrative Law Judge Richard L. Sippel

**OPPOSITION TO ADAMS' MOTION TO PRESENT REBUTTAL
TESTIMONY**

Reading Broadcasting, Inc. ("Reading"), by its counsel, hereby opposes "Adams' Motion for Leave to Present Rebuttal Testimony" ("Motion") filed by Adams Communications Corporation on January 21, 2000. In support, the following is shown:

The Motion seeks leave to present three types of testimony that Adams describes as rebuttal testimony: (1) direct testimony of Daniel Bendetti, a former employee who was terminated by Reading after the end of the license term and who was deposed by Adams on October 25, 1999; (2) deposition testimony of Frank

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McCracken, a principal of Reading; and (3) deposition testimony of Jack Linton, a principal of Reading.

An administrative law judge has broad discretion to regulate the course of a hearing, including the power to refuse to admit rebuttal testimony. *See Kimler Broadcasting, Inc.*, 1999 FCC LEXIS 3945, FCC 99-221 (released August 17, 1999) at ¶ 8; *Meredith Corp.*, 4 FCC Rcd 2666 (Rev. Bd. 1989) at ¶¶ 31 and 39.¹ Mr. Bendetti was deposed by Adams on October 25, 1999. Adams, having deposed Mr. Bendetti well in advance of the hearing, could have presented direct testimony of Mr. Bendetti at the hearing or could have sought to introduce Mr. Bendetti's deposition as part of its direct case on the renewal expectancy issue.

The proposed testimony of Mr. Bendetti that Adams characterizes as "rebuttal" testimony does not actually rebut Reading's testimony, but rather seeks to introduce new direct evidence that Adams considers adverse to Reading. Specifically, paragraphs 8(b), 8(c), 8(e) and 8(f) of Adams' Motion clearly constitute new direct evidence, not rebuttal evidence.

Paragraph 8(a) of Adams' Motion proposes to rebut the following statement of Mr. Mattmiller: "Foremost of importance, as mandated by Mike Parker, General Manager of Reading Broadcasting, Inc. was upholding the station's obligation as a public trustee in terms of providing service to the community." However, Adams fails to demonstrate how it would rebut this statement. Clearly, Mr. Bendetti is unable to testify as to discussions between Mr. Parker and Mr. Mattmiller or as to

¹ *Reversed on other grounds*, 5 FCC Rcd 7015 (1990).

Mr. Mattmiller's understanding of his instructions from Mr. Parker. Moreover, Reading's direct case acknowledges the station's weak financial condition and efforts to keep the station on the air while the company was in bankruptcy. See Reading Ex. 4. Any testimony by Mr. Bendetti about the Station's financial concerns would not qualify as rebuttal testimony because that subject has already been addressed in Phase I of the hearing through direct evidence and the opportunity for cross-examination. Had Adams wished to present evidence on this subject, it could have done so.

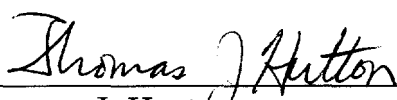
Paragraph 8(d) of Adams' Motion proposes to rebut the testimony of Mr. Kase concerning the station's use of taped or satellite-fed programming rather than live programming. Although posed as rebuttal testimony, this is direct evidence that Adams could have presented at the hearing. In fact, Adams advanced claims on this subject in its pleadings prior to the hearing, so it is clear that any evidence on this score could have been presented at the hearing. *See* Pretrial Brief of Adams Communications Corp. (filed December 20, 1999) at 3.

The deposition testimony of Frank McCracken does not constitute valid rebuttal evidence because the deposition testimony is consistent with and does not contradict Reading's direct case. (In fact, Adams does not even claim that there is any inconsistency.) Furthermore, Section 1.321(d)(2) does not permit deposition testimony to be used as rebuttal evidence as proposed by Adams. *See Bennett Gilbert Gaines*, 9 FCC Rcd 533 (1994) at n. 4.

Likewise, the deposition testimony of Jack Linton does not constitute valid rebuttal evidence because the deposition testimony is consistent with Mr. Parker's testimony. (Again, Adams does not even claim that there is any inconsistency.) Furthermore, Section 1.321(d)(2) does not permit deposition testimony to be used as rebuttal evidence. *See Bennett Gilbert Gaines, supra.*

Respectfully submitted,

READING BROADCASTING, INC.

By: 
Thomas J. Hutton
C. Dennis Southard IV
Its Attorneys

Holland & Knight LLP
2100 Pennsylvania Ave., NW
Suite 400
Washington, DC 20037-3202
(202) 955-3000

January 31, 2000

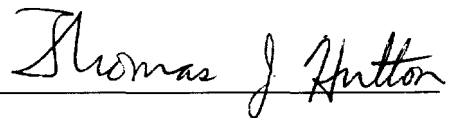
CERTIFICATE OF SERVICE

I, Thomas J. Hutton, an attorney in the law firm of Holland & Knight LLP, do hereby certify that on January 31, 2000, I caused a copy of the foregoing Opposition to Adams Motion to Present Rebuttal Testimony to be delivered via facsimile, as follows:

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C864
Washington, D.C. 20554
(facsimile no. (202) 418-0195)

James Shook, Esq.
Enforcement Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-A463
Washington, D.C. 20554
(facsimile no. (202) 418-1124)

Gene A. Bechtel, Esq.
Henry F. Cole, Esq.
Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(facsimile no. (202) 833-3084)
(Counsel for Adams Communications Corporation)



Thomas J. Hutton